and he has no excuse. Insolvency justifies refusal of credit and an assumption that the contract will not be carried out. *Ex parte Chalmers*, L. R. 8 Ch. 289. Consequently, the evidence in the principal case should be admitted unless the plaintiff shows he would have given notification of his intention and ability to buy for cash, but was misled because the defendant did not base his rescission on insolvency.

CONTRIBUTORY NEGLIGENCE — DIVISION OF DAMAGES BETWEEN NEGLIGENT VESSELS. — An action was brought in a state court for damages caused to the plaintiff's vessel by a collision with the defendant's vessel, due to the negligence of both. *Held*, that the plaintiff may recover one-half of the loss suffered. *St. Louis & Tennessee River Packet Co.* v. *Murray*, 139 S. W. 1078 (Ky.).

Heretofore, if a plaintiff has brought his action in a state court for negligent injury to a vessel by collision, the common-law rule has been applied that if he is negligent he cannot recover. *New York Harbor Towboat Co.* v. *New York, etc. Ry. Co.*, 148 N. Y. 574, 42 N. E. 1086. See *Union Steamship Co.* v. *Nottinghams*, 17 Grat. (Va.) 115, 123. An early Louisiana case stated that if both vessels were at fault the loss should be divided. *Brickell* v. *Frisby*, 2 Rob. (La.) 204. Later cases in that state refuse to apply this rule. *Murphy* v. *Diamond*, 3 La. Ann. 441. Except for the Louisiana case, the principal case is the only instance of an action in a state court where the admiralty rule of damages has been applied. It directly overrules an earlier Kentucky decision. *Broadwell* v. *Swigert*, 7 B. Mon. (Ky.) 39.

CRIMINAL LAW — APPEAL — PRESUMPTION AS TO HARMLESS ERROR. — At the trial of the defendant for perjury a question was submitted to the jury which the court should have decided. The defendant was convicted. *Held*, that to secure a reversal the defendant must show that the error was prejudicial to him. *Coleman* v. *State*, 118 Pac. 594 (Okl.).

Several jurisdictions have the rule that if the error might have prejudiced the rights of the defendant, there must be a reversal. *Boyd* v. *State*, 16 Lea (Tenn.) 149. See *Boren* v. *State*, 32 Tex. Cr. R. 637, 645, 25 S. W. 775, 776. Others hold that if there was error it is presumed prejudicial to the defendant, and unless this presumption is rebutted, a reversal must follow. *Barnett* v. *Commonwealth*, 84 Ky. 449, 1 S. W. 722; *State* v. *Johnson*, 69 Ia. 623, 29 N. W. 754. The principal case holds that a defendant must show the appellate court that the error prejudiced his rights in order to secure a reversal. This rule is the best, and has the support of advanced thinkers on criminal procedure. See 35 REPORTS OF AMERICAN BAR ASSOCIATION, 624 *et seq.* A recent amendment to the Constitution of California, proposed by the legislature, provides that there shall be no reversal in a criminal case unless the court believes the error has resulted in a miscarriage of justice. CAL. STAT. OF 1911, 1798, c. 36.

CRIMINAL LAW — INSANITY — BURDEN OF PROOF. — In a trial for murder the defendant introduced evidence of insanity. *Held*, that the burden is upon the prosecution to prove sanity beyond a reasonable doubt. *Adair* v. *State*, 118 Pac. 416 (Okl.).

The principal case is correct in holding that insanity is a question of responsibility, and not an affirmative defense, the presumption of sanity placing the burden of going forward upon the defendant but not relieving the prosecution of its duty of proving all essential elements of the offense. For the authorities and principles involved, see 4 HARV. L. REV. 45, 55; 11 *id.* 62; 13 *id.* 59; 18 *id.* 312.

DAMAGES — CONSEQUENTIAL DAMAGES — RECOVERY FOR MENTAL ANGUISH CAUSED BY BREACH OF CONTRACT. — The plaintiff bought a ticket for

admission to the defendant's public seashore bathhouse. A dispute arose between the plaintiff and one of the defendant's servants, as a result of which the plaintiff was ejected from the premises. The plaintiff brought an action for breach of contract. *Held*, that the plaintiff may recover damages for the indignity as well as the price of the ticket. *Aaron* v. *Ward*, 46 N. Y. L. J. 963 (N. Y., Ct. App., Nov. 21, 1911).

Proprietors of bathhouses, as of other places of public resort, may be forbidden by statute to refuse admittance to any citizen properly applying. *Cf. Greeneberg* v. *Western Turf Association*, 140 Cal. 357, 73 Pac. 1050; *People* v. *King*, 110 N. Y. 418, 18 N. E. 245. But aside from statutory regulations the proprietor may serve whom he pleases. *People ex rel. Burnham* v. *Flynn*, 189 N. Y. 180, 82 N. E. 169. Though by selling a ticket the proprietor contracts to give the purchaser a license to enter his premises, he has the power to break the contract and revoke the license. *Wood* v. *Leadbitter*, 13 M. & W. 838; *Horney* v. *Nixon*, 213 Pa. St. 20, 61 Atl. 1088. Thereafter the ticket-holder enters or continues on the premises as a trespasser, and cannot maintain an action for assault if he is ejected with reasonable force. *McCrea* v. *Marsh*, 12 Gray (Mass.) 211; *Burton* v. *Scherpf*, 83 Mass. 133. But an action for breach of contract lies. *Taylor* v. *Cohn*, 47 Or. 538, 84 Pac. 388. Compensatory damages for breach of contract will not usually include a recovery for mental distress. *Hamlin* v. *Great Northern Ry. Co.*, 1 H. & N. 408; *Connell* v. *Western Union Tel. Co.*, 116 Mo. 34, 22 S. W. 345. But when from the nature of the contract it can be foreseen that great mental anguish will result from the breach, for which a recovery of the consideration paid is utterly inadequate compensation, such suffering should be considered in estimating damages. *Renihan* v. *Wright*, 125 Ind. 536, 25 N. E. 822. On the same theory the principal decision is to be commended. *Smith* v. *Leo*, 92 Hun (N. Y.) 242, 36 N. Y. Supp. 949. *Contra, Buenzle* v. *Newport Amusement Association*, 29 R. I. 23, 68 Atl. 121. See 21 HARV. L. REV. 541.

EMINENT DOMAIN — COMPENSATION — COSTS. — A statute provided that "costs shall not be taxed to any party" by the court of claims. Condemnation proceedings were brought in this court. Another statute provided that "costs, where not specially regulated, may be awarded." *Held*, that costs may be allowed the owner of the property. *Brainerd* v. *State*, 131 N. Y. Supp. 221 (Ct. of Claims).

With rare exceptions the decisions have avoided holding that the constitutional requirement of "compensation" to the owner of property taken under eminent domain assures to him the allowance of costs in condemnation proceedings. In some, the constitutional provision merely fortifies an otherwise reasonable construction of a statute for the allowance of such costs. *City and County of San Francisco* v. *Collins*, 98 Cal. 259, 33 Pac. 56. In others, it has induced courts, in order to achieve a similar result, to give statutes a strained construction. *Stolze* v. *Milwaukee, etc. R. Co.*, 113 Wis. 44, 88 N. W. 919. A statutory repetition of the constitutional provision has been held to provide for the allowance of costs. *Land and Canal Co.* v. *Hartman*, 17 Colo. 138, 29 Pac. 378. But the great weight of authority refuses to allow costs in the absence of statute. *Gifford* v. *Dartmouth*, 129 Mass. 135; *Matter of Board of Rapid Transit Railroad Commissioners*, 197 N. Y. 81, 90 N. E. 456. *Contra, Petersburg School District* v. *Peterson*, 14 N. D. 344, 103 N. W. 756. Costs of an appeal unsuccessfully taken by the owner can even be taxed against him. *Matter of Village of Theresa*, 121 N. Y. App. Div. 119, 105 N. Y. Supp. 568; *Kitsap County* v. *Melker*, 52 Wash. 49, 100 Pac. 150. But it is unconstitutional to tax against the owner the costs of an appeal successfully brought by the condemning party. *Matter of New York, etc. Ry. Co.*, 94 N. Y. 287; *Grays Harbor Boom Co.* v. *Lownsdale*, 54 Wash. 83, 104 Pac. 267. *Contra, Metler* v. *Easton*